IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (PIL) NO. 2 OF 2007

Sarthiseva Sangh and another ...Petitioners

Versus

Mr. Nandlal , State Election Commissioner and others ... Respondents

Mr. M.P. Vashi, instructed by Mr. Asif Ali Siddiquie, for the petitioners.
Mr. Sachin Shetye for respondent No.1.
Ms. P.A. Purandare for respondent No.2.

CORAM: **H.L. GOKHALE, Ag. C.J.,** &
V.M. KANADE, J.

DATE: **JANUARY 19, 2007**.

P.C.

Heard Mr. Vashi in support of this petition. Mr. Shetye appears for respondent No.1 and Ms. Purandare appears for Respondent No.2.

2. The first petitioner is a non-government organization and the second petitioner is its General Secretary. The petition prays that the election programme for the election to the second respondent Corporation of Mumbai be withdrawn. It is also prayed that the notification dated 14th August, 2006 allocating reservation to the

Backward Classes for certain seats be declared to be invalid and be quashed. Amongst others, in paragraph 18 (c) of the petition, it is averred that while considering reservation, rotation rule was not followed. That is the point which is stressed by Mr. Vashi, learned counsel for the petitioners. He relies upon the provision of the Constitution of India contained in Article 243-T which provides for reservation of seats and it further provides that such seats be allotted by rotation to different constituencies in a Municipality. He submits that this has not been done in the ensuing election which is to be held on 1st February, 2007.

3. With a view to appreciate this submission, we looked into the formation of the Wards when the elections were held in the year 2001 and later on for the elections to be held on in the year 2007. By way of example, we looked into the reservations which were provided for Scheduled Tribes in 2001 and now are provided for 2007 as also those for the Scheduled Castes. Before we do that exercise, we noted the submission of Ms.Purandare, learned counsel appearing for the Municipal Corporation, that when Wards were formed in the year 2001, which was on the basis of the 1991 census, the Ward numbers were given from South to North. For 2007 elections, the Wards are formed

on the basis of the population as noted in the census of 2001 and the ward numbers are given from North to South. She further stated that an effort is made to see to it that each ward has a voting population of 52,000 to 53,000. She further pointed out that 33 per cent reservation has been provided for women which was there in the earlier years also. She asserts that the Corporation has followed the rule of rotation.

4. Now when we see the wards which are allotted to the Scheduled Tribes, earlier the wards were 57 and 110. Earlier Ward No. 57 was Worli Village whereas Ward No.110 was Versova. In the very elections wards reserved for Scheduled Tribe are Manori Ward No. 29 and Ward No. 188 Worli Village. Thus, Worli village is common out of the two Scheduled Tribe Wards. We must however note in this behalf that in the city of Mumbai, the Scheduled Tribe population is in very small pockets and it appears that one of the two wards is continued to be retained for the Scheduled Tribe whereas the other one has changed. We, however, note the submission of Ms. Purandare that the boundaries of these wards have changed as also the population in the wards. When we come to Scheduled Castes, we find that in the earlier year, the wards reserved were 17 Bhatia Hospital, 50 Mahalaxmi Race Course, , 53 Parel S.T. Dept, 60 Kasturchand Mills, 65 Estrella

Batteries , Mahim, 67, 69 and 70 different parts of Dharavi, 79 Naupada-Kherwadi, 178 Suman Nagar, 180 Sahakar Nagar, 185 Mahul, 192 Borla North Slaughter House, 196 Ramabai Nagar. Now the wards reserved for Scheduled Caste in the present election are 128 Kamraj Nagar, 137 New Gautam Nagar, 138 Deonar Slaughter House, 143 Suman Nagar Sindhi Society, 145 Sahakar Nagar, 148 Jyoti Nagar, 175 Mahim Kala Killa, 177 Mukund Nagar, 178 Western India Tanneries 193 Shanti Nagar-Arthur Road Jail and 211 Bhatia Hospital. Thus, it appears that perhaps a very few of these Wards are continued to be reserved such as Bhatia Hospital, Sahakar Nagar and Suman Nagar. It is, however, material to note, as stated by Ms.Purandare, that the boundaries of these wards are changed and the Corporation also has to see to it that those wards where the population of particular communities is quite large, get their representatives by way of reservation.

5. Be that as it may, the fact remains that it is the mandate of the Constitution and it is also provided in Section 5A (6) of the B.M.C. Act that the seats which are reserved under sub-sections (2), (3) and (5) thereof are allotted by rotation to different wards.

6. What is material, however, to note is that this ward formation was done way back on 14th August, 2006 and the draft notification for that was issued on 8th June, 2006. This petition is filed on 16th January, 2007 when the elections are to be held on 1st February, 2007. Petition came up before us yesterday i.e. 18th January, 2007 and we have heard counsel for the parties today. Today is the last day for withdrawal of the nominations. We must also note that Article 243-ZG provides in sub-clause (a) that law relating to the delimitation of constituencies shall not be called in question. Mr. Vashi, however, points out that he is concerned with rotation and not de-limitation. The fact, however, remains that the petition is filed so belatedly and though it is mpossible to content that perhaps a few constituencies have remained common, it is difficult to come to a definite conclusion that the Corporation has failed to abide by the requirement of rotation.

7. Mr. Vashi made a reference to a judgment rendered by the Aurangabad Bench of this Court which interfered with the Zilla Parishad elections for not following the rotational policy. He pointed out that the said Judgement is left undisturbed by the Apex Court. Mr. Shetye, learned counsel for the Election Commission, however, points out that the petition before the Aurangabad Bench was filed way back in August,

2006 and the court had the opportunity to examine the submissions of the petitioner therein after giving an opportunity to the Election Commission. In the present case, that is not possible since the petition is filed at the last stage.

8. In this view of the matter, it is not possible to entertain the petition. We, however, hope that assuming that there is any departure from the interpretation, the submissions made by the petitioners' counsel will be considered by the authorities of the respondents as also the mandate of the B.M.C. Act and the Constitution of India when the constituencies are formed on the next occasion. The petition is dismissed.

ACTING CHIEF JUSTICE

V.M. KANADE, J.